

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANGELA MARIE CHRISTY,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

CASE NO. 14-cv-05362 JRC

ORDER ON PLAINTIFF'S  
COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge and Consent Form, ECF No. 3; Consent to Proceed Before a United States Magistrate Judge, ECF No. 4). This matter has been fully briefed (*see* ECF Nos. 12, 16, 17).

After considering and reviewing the record, the Court concludes that the ALJ provided clear and convincing reasons for failing to credit fully plaintiff's allegations and

1 testimony, including her non-compliance with medical treatment, but her improvement  
2 when compliant; lack of motivation to work; and inconsistent statements. The ALJ also  
3 provided specific and legitimate rationale for his failure to credit fully all of the medical  
4 opinions, noting for example, that plaintiff's objective test results indicated that plaintiff  
5 was over-reporting unlikely symptoms, that one doctor strongly suspected malingering  
6 and another doctor opined that plaintiff's profile was "definitely exaggerated." Because  
7 the doctors relied on plaintiff's unreliable self-reporting when providing their opinions,  
8 the ALJ properly declined to credit fully all of their opinions.  
9

10 Therefore, this matter is affirmed pursuant to sentence four of 42 U.S.C. § 405(g).

#### 11 BACKGROUND

12 Plaintiff, ANGELA MARIE CHRISTY, was born in 1979 and was 28 years old on  
13 the alleged date of disability onset of January 1, 2008 (*see* Tr. 123-25). However, because  
14 plaintiff has applied only for supplemental security income, which is not payable prior to  
15 the month following the month in which the application was filed and plaintiff filed her  
16 application on January 29, 2009, the ALJ's written decision includes findings and  
17 conclusions regarding plaintiff's condition since January 29, 2009, although the ALJ  
18 indicates that he considered the complete medical history (*see* Tr. 623, 625).

19 Plaintiff left school after the 8<sup>th</sup> grade (Tr. 27). Plaintiff has worked as a  
20 dishwasher, as a hostess in a restaurant, as a customer service/video, and on an assembly  
21 line (Tr. 213-17). At her first administrative hearing in December, 2010, plaintiff could  
22 not remember the last time that she had held a job (*see* Tr. 50).  
23  
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1 According to the ALJ, at the time of latest hearing on December 6, 2013, plaintiff  
2 had at least the severe impairments of “degenerative joint disease in the knees;  
3 gastroesophageal reflux disease; diabetes; fibromyalgia; obesity; carpal tunnel syndrome;  
4 depression; bipolar disorder; panic disorder without agoraphobia; cognitive disorder;  
5 personality disorder; and drug abuse (20 CFR 416.920(c))” (Tr. 625).

6 At the time of the hearing, plaintiff was separated from her husband and living in  
7 an apartment with two of her minor children (Tr. 628).

#### 8 PROCEDURAL HISTORY

9 Plaintiff provides the following procedural history:  
10

11 Ms. Christy protectively filed an application for supplemental  
12 security income on January 29, 2009, wherein she alleged disability on  
13 January 1, 2008 (Tr. 123-125). Her applications were denied at the initial  
14 determination and reconsideration stages (Tr. 84-87, 91-93). Ms. Christy  
15 thereafter filed a Request for Hearing (Tr. 94-96). A hearing was held  
16 before an administrative law judge on December 17, 2010 in Portland,  
17 Oregon (Tr. 46-64). The ALJ issued a decision on December 29, 2010,  
18 denying plaintiff’s claim (Tr. 14-37). Plaintiff appealed the decision to the  
19 Appeals Council on February 23, 2011, and an Order denying review of  
20 the decision of the ALJ was issued on January 19, 2012 (Tr. 1-9).

21 Ms. Christy filed an action in the United States District Court for  
22 the Western District of Washington on March 21, 2012 (Tr. 760-762). On  
23 December 4, 2012, an Order was issued by United States Magistrate  
24 Judge J. Richard Creatura, remanding the case to the Commissioner,  
pursuant to sentence four of 42 U.S.C. § 405(g) (Tr. 704-727). The  
Appeals Council issued a further Order dated May 24, 2013, vacating the  
hearing decision dated December 29, 2010 and remanding the case back  
to the ALJ (Tr. 728-731).

A hearing was held on December 6, 2013 before an ALJ (Tr. 672-  
703). The ALJ issued a decision on January 6, 2014, denying plaintiff’s  
claim (Tr. 620-649). Following this decision, plaintiff did not file written  
exceptions with the Appeals Council, and the Appeals Council did not  
assume jurisdiction. Ms. Christy thereafter made timely appeal to the  
instant court seeking review of the denial of benefits.

1 (See Plaintiff's Opening Brief, ECF No. 12, pp. 1-2).

2 Plaintiff raises the following issues: (1) Whether or not the ALJ properly evaluated  
3 the medical issues; and (2) Did the ALJ provide clear and convincing reasons to discredit  
4 plaintiff's testimony (*see* Defendant's Brief, ECF No. 16, p. 2).

#### 5 STANDARD OF REVIEW

6 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
7 denial of social security benefits if the ALJ's findings are based on legal error or not  
8 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
9 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.  
10 1999)).  
11

#### 12 DISCUSSION

##### 13 **(1) Whether or not the ALJ properly evaluated the medical issues.**

14 Plaintiff contends that the ALJ failed to evaluate appropriately multiple medical  
15 opinions. Defendant contends that the ALJ provided specific and legitimate rationale for  
16 failing to credit the opinions, and also provided a sufficiently detailed and thorough  
17 discussion of the evidence in the record.

18 When an opinion from an examining or treating doctor is contradicted by other  
19 medical opinions, the treating or examining doctor's opinion can be rejected "for specific  
20 and legitimate reasons that are supported by substantial evidence in the record." *Lester v.*  
21 *Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (*citing Andrews v. Shalala*, 53 F.3d 1035,  
22 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ  
23 can accomplish this by "setting out a detailed and thorough summary of the facts and  
24

1 conflicting clinical evidence, stating his interpretation thereof, and making findings.”

2 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881  
3 F.2d 747, 751 (9th Cir. 1989)).

4 A. Dr. Wendy Biss, Ph.D., examining doctor

5 Dr. Biss examined plaintiff in May 2008 (*see* Tr. 324-33). Dr. Biss noted  
6 plaintiff’s report of recurring feelings of depression on most days, as well as returning  
7 anxiety when outside her home and recurring feelings of hopelessness (*see* Tr. 327). Dr.  
8 Biss noted plaintiff’s report that she was having difficulty leaving the home and being  
9 around people (*see* Tr. 328). Regarding plaintiff’s mini mental status examination, Dr.  
10 Biss noted that plaintiff “consecutively completed forward digit span up to six digits”  
11 (*see id.*). Although Dr. Biss noted that plaintiff appeared to have more difficulty with  
12 tasks related to abstract reasoning, Dr. Biss opined that this result “may have reflected her  
13 minimal effort on these tasks” (*see id.*). Although plaintiff “did not attempt abstract  
14 reasoning related to proverbs, [plaintiff] was able to provide correct answers to all  
15 similarities” (*see id.*). Dr. Biss noted that when plaintiff was asked questions related to  
16 comprehension and ways to manage basic safety behaviors, plaintiff “also appeared to  
17 give limited effort and appeared somewhat uncooperative” (*see id.*). Dr. Biss noted that  
18 plaintiff’s “answers were often quick and brief, with limited effort or thought” (*see id.*).  
19 Dr. Biss provided an example: when plaintiff was answering the question regarding why  
20 individuals are expected to pay taxes, “she reported, ‘never had to pay taxes, so it doesn’t  
21 catch up to you later’” (*see id.*).  
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1 Plaintiff reported that she consumed alcohol infrequently at social events (*see id.*).  
2 Dr. Biss also noted plaintiff's report that "her Valium doesn't help and she often over  
3 uses the medication" (*see id.*). Dr. Biss noted that plaintiff "reported that she left school  
4 in eighth grade due to behavioral difficulties" (*see Tr. 329*). Dr. Biss noted that plaintiff  
5 "reported that when she placed effort into her behaviors she was capable of receiving  
6 A's" (*see id.*). Dr. Biss noted plaintiff's report of very few jobs since her teenage years  
7 (*see id.*).  
8

9 Dr. Biss noted that plaintiff reported that she had driven herself to the interview,  
10 but also reported that her driver's license was invalid, but that she continues to drive  
11 anyway (*see Tr. 329–30*). Dr. Biss also noted that plaintiff did not show up for her  
12 previously scheduled appointment "and could not provide an explanation of what  
13 precipitated her absence from the first scheduled appointment" (*see Tr. 330*).  
14

15 Dr. Biss opined that plaintiff's mood throughout the interview and testing "was  
16 somewhat incongruent to her reported affect of anxious and depressed" (*see id.*). Dr. Biss  
17 noted that plaintiff appeared lethargic, detached, bored, and disinterested, but that her  
18 reported "anxiety was not visibly noticeable" (*see id.*). Dr. Biss observed that plaintiff's  
19 speech often was "overly vague and contradictory" and that plaintiff appeared somewhat  
20 uncooperative (*see id.*). Dr. Biss opined that although plaintiff's speech was slow, it was  
21 logical (*see id.*).  
22

23 Regarding plaintiff's mini-mental status exam (MMSE) results, Dr. Biss noted that  
24 plaintiff fell within the normal range for her performance (*see id.*). Dr. Biss also noted  
that plaintiff did not appear to have any deficits in her remote or recent memory, although

1 she appeared to have the most difficulty with delayed recall (*see id.*). Dr. Biss opined that  
2 based on plaintiff's presentation during testing, plaintiff "appeared able to: easily read  
3 and write small sentences, perform immediate recall, name common objects, perform  
4 basic attention tasks, such as spelling backwards, perform basic repetition, perform tasks  
5 of visual motor integration, and follow three-step commands" (*see id.*).

6 Dr. Biss also conducted objective testing regarding the validity of plaintiff's self  
7 reports. As noted in the 2008 opinion by Dr. Biss, the "Structured Inventory of  
8 Malingered Symptomatology (SIMS) is a 75 – item self-report measure that is used to  
9 detect malingering across a wide variety of clinical and forensic settings, [and a] SIMS  
10 Total Score of 14 or greater is used to detect malingered responding and provides a high  
11 level of sensitivity and specificity [while] a cutoff score of 16 is often used to enhance  
12 diagnostic accuracy and correctly identify 90% of malingerers and 98% of honest  
13 responders" (Tr. 330). As noted by Dr. Biss, plaintiff's "Total Score for the SIMS was a  
14 38, therefore far outweighing the conservative cutoff score of 16" (*see id.*). Dr. Biss noted  
15 that plaintiff "over reported symptoms in every category except psychosis" (*see id.*).

16 Dr. Biss opined that plaintiff's "performance on the SIMS along with her erratic  
17 and apathetic performance throughout testing indicate that she likely overreported her  
18 level of distress and level of cognitive impairment" (*see Tr. 331*). Dr. Biss opined that it  
19 was "very likely that her scores on the MMSE and measures of ADL's may not be wholly  
20 accurate depictions of her current functioning" (*see id.*). Dr. Biss also indicated her  
21 opinion as follows: "[Plaintiff's] scores on the SIMS indicate a very high likelihood that  
22 she overreported symptoms of impairment and failed to perform a full effort on all  
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1 measures. Due [to] the potential for monetary gain and her reported inability to sustain  
2 full – time employment in the past malingering is strongly suspected” (*see id.*). For one  
3 of her recommendations, Dr. Biss indicated that “[when] interpreting the results be  
4 cautious as it is very likely [plaintiff] overreported her level of dysfunction and did not  
5 perform fully on all tasks” (*see id.*).

6       Among her major findings, Dr. Biss indicated that plaintiff’s “overreporting of  
7 symptoms, use of lying for personal gain, likelihood of malingering, consistent  
8 irresponsibility, and lack of remorse appear consistent with Antisocial traits” (*see Tr.*  
9 332). Dr. Biss noted plaintiff’s report that plaintiff indicated she was capable of receiving  
10 A’s in school when she placed effort into her behaviors, and noted that during the  
11 interview, plaintiff “spoke in a very self pitying and contradictory manner” (*see id.*). Dr.  
12 Biss indicated that it “was very difficult to ascertain the accuracy of her reporting due to  
13 her inconsistency” (*see id.*).

15       Dr. Biss indicated that plaintiff likely would have difficulty accepting instruction  
16 from others because of plaintiff’s apathy, disinterest, and difficulties with authority (*see*  
17 *Tr.* 333). She indicated that plaintiff’s difficulty in this area was moderate (*see Tr.* 325).  
18 Dr. Biss also opined that based on plaintiff’s MMSE performance, “and her answers to  
19 questions throughout the diagnostic interview she appears to [be] able to support herself  
20 based on her cognitive abilities” (*see Tr.* 333). Dr. Biss opined that plaintiff’s lack of full  
21 completion of her household chores “appears largely related to her apathy, lack of  
22 motivation, and anhedonia” (*see id.*).



1 The ALJ discussed the 2008 opinion of Dr. Biss (*see* Tr. 637). The ALJ included  
2 the following discussion in his written decision:

3 Wendy Biss, Ph.D., completed a medical source statement of ability to  
4 do work-related mental activities in May 2008. She also provided an  
5 adult diagnostic assessment (internal citation to Ex. 11F). Dr. Biss  
6 opined the claimant's ability to understand, remember and carry out  
7 instructions is not affected by her impairments. She has no limitation in  
8 her ability to respond appropriately to usual work situations and to  
9 changes in a routine work setting. She has moderate limitation in the  
10 ability to interact appropriately with the public, supervisors, and co—  
11 workers because of antisocial/borderline personality traits (internal  
12 citation to Ex. 11F/2). This opinion is given little weight because of the  
13 claimant's lack of credibility and because of Dr. Biss' findings regarding  
14 potential malingering. Objective testing in the form of the structured  
15 inventory of malingered symptomatology (SIMS) reflected over  
16 reporting of unlikely symptoms in every category except psychosis  
17 (internal citation to Ex. 11F/7). The claimant's performance on the  
18 Minnesota Multiphasic Personality Inventory (MMPI-2) administered by  
19 another examiner also revealed that the claimant was endorsing  
20 infrequent, unlikely and unrealistic psychiatric symptoms (internal  
21 citation to Ex. 19F/5). Dr. Biss concluded that based on the claimant's  
22 erratic and apathetic performance throughout testing, malingering was  
23 strongly suspected (internal citation to Ex. 11F/8). Such evidence of lack  
24 of effort mirrors problems with the claimant's performance noted by the  
consultative examiner who evaluated the claimant's physical  
impairments (internal citation to Ex. 23F/6-7). Giving the claimant's  
complaints of social anxiety (internal citation to Ex. 19F/2) and alleged  
difficulties with concentration (internal citation to Ex. 19F/3) a modicum  
of weight against the backdrop of her estimated average IQ (internal  
citation to Ex. 19F/4), the undersigned added limitations restricting the  
claimant to unskilled work with limited public interactivity.

(Tr. 637-38).

Based on a review of the record, the Court concludes that the ALJ's  
characterizations and findings are based on substantial evidence in the record as a whole.  
As noted by the ALJ, in addition to the SIMS, another objective psychological test, which  
was conducted by Dr. Robert E. Schneider, Ph.D., in October, 2008, the MMPI-2

1 (Minnesota Multiphasic Personality Inventory), also “indicates over-reporting of  
2 symptoms” (*see* Tr. 375). As noted by Dr. Schneider, plaintiff “was endorsing infrequent,  
3 unlikely and unrealistic psychiatric symptoms” (*see id.*). The Court also notes that Dr.  
4 Biss included in her opinion the recommendation that one “be cautious” when  
5 interpreting the results indicated in the opinion because “it is very likely [plaintiff] over  
6 reported her level of dysfunction and did not perform fully on all tasks” (Tr. 331).

7  
8 For the reasons stated and based on a review of the record as a whole, including  
9 the ALJ’s thorough discussion “of the facts and conflicting clinical evidence, stating his  
10 interpretation thereof, and making findings,” the Court concludes that the ALJ provided  
11 specific and legitimate rationale for failing to credit fully all the opinions included in Dr.  
12 Biss’ report. *See Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (*citing Magallanes*  
13 *v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)); *see also Lester v. Chater*, 81 F.3d 821,  
14 830-31 (9th Cir. 1996) (*citing Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995);  
15 *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

16 B. Dr. Robert Schneider, Ph.D., examining doctor

17 Dr. Schneider examined plaintiff on two occasions, most relevantly, in October  
18 2008, after plaintiff’s head injury (*see* Tr. 371-76). Dr. Schneider noted plaintiff’s report  
19 that her “thinking has been confused since the accident” (*see* Tr. 372). He noted her  
20 report that she felt as if her biggest problem was her memory (*see id.*). He noted her  
21 report that when she watches television she cannot remember what she was watching  
22 after commercial breaks (*see id.*). He also noted that she reported being anxious and  
23 attempted to avoid being with more than one person (*see id.*). Dr. Schneider noted  
24

1 plaintiff's report of depression and high anxiety, along with frequent panic attacks and  
2 social anxiety (*see id.*).

3 Dr. Schneider also indicated plaintiff's report that a doctor at Family Health  
4 Center diagnosed her with attention deficit disorder (*see* Tr. 373). Dr. Schneider noted  
5 that plaintiff ranked her depression "as 10 out of 10, with 10 being the worst depression  
6 she could imagine and anxiety is 10 out of 10" (*see id.*). He noted plaintiff's report that  
7 there was nothing enjoyable in her life anymore (*see id.*). Dr. Schneider also noted  
8 plaintiff's report that plaintiff "was able to work until she suffered her head injury" (*see*  
9 *id.*). He also noted her opinion that she "would have to work alone because she has  
10 difficulty being around others" (*see* Tr. 374). Regarding her vocational interests, Dr.  
11 Schneider noted plaintiff's report that "there is nothing that she can think of that she is  
12 able to do" (*see id.*).

14 Dr. Schneider also conducted a mental status evaluation and noted plaintiff's  
15 extremely flat affect and that she was very slow to respond, demonstrating extremely low  
16 energy (*see id.*). He indicated that plaintiff barely had sufficient energy to perform the  
17 tests and noted various tests that she was not able to perform, such as her struggle to  
18 conduct serial three subtractions and serial seven additions (*see id.*). However, he noted  
19 that she responded appropriately to a question testing her judgment, was able to interpret  
20 proverbs accurately and was able to identify similarities between objects (*see id.*).

22 Dr. Schneider administered a number of tasks, such as the Weschler Adult  
23 Intelligence Scales test, which indicated that plaintiff's IQ was equivalent to 97, which  
24 placed her precisely at the average level (*see id.*). He also administered Trails A and B, in

1 which plaintiff was asked to connect sequentially various numbered dots, and opined that  
2 her score on Trails B was impaired relative to her intelligence (*see id.*). Dr. Schneider  
3 administered the Verbal Memory Subtest, in which plaintiff scored at the lower end of  
4 the low average range, which was below expected level but did not indicate severe  
5 impairment (*see* Tr. 375). Dr. Schneider administered the Fluency Subtests from the  
6 Woodcock Johnson –III and noted that she “scored at the 11th grade level on the Reading  
7 Fluency Test and the 7.1 grade level on the math fluency” (*see id.*).  
8

9         The Court noted previously the MMPI –2 test administered by Dr. Schneider, *see*  
10 *supra*, section 1.A (*see id.*). He noted that her “F – K index was 17, which invalidates the  
11 profile and indicates over reporting of symptoms” (*see id.*). Dr. Schneider noted that  
12 similarly, plaintiff generated a “T – score of 92 on the exaggeration of impairment scale”  
13 and that plaintiff also “generated an extremely high score on the scale that indicates she  
14 was endorsing infrequent, unlikely and unrealistic psychiatric symptoms” (*see id.*). Dr.  
15 Schneider noted that plaintiff’s profile was “definitely exaggerated,” but Dr. Schneider  
16 opined that plaintiff was “an individual who views herself as the sum of her symptoms  
17 and, in fact, one of the characteristics of post concussive syndrome is a wide range of  
18 unexplainable symptoms and physical difficulties” (*see id.*). The Court notes that, as  
19 argued by defendant, this aspect of Dr. Schneiders’ opinion suggests that he found  
20 plaintiff’s exaggeration to demonstrate only a symptom of plaintiff’s brain injury, as  
21 opposed to reflecting any attempt on the part of plaintiff to exaggerate her symptoms or  
22 to present herself as more disabled than she actually was (*see* ECF No. 16, p. 8).  
23  
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1 Subsequently, Dr. Schneider indicated his opinion that plaintiff described “residual  
2 symptomatology that is very consistent with the head injury” (*see* Tr. 376).

3 As noted by the ALJ, Dr. Schneider indicated that with the number of cognitive  
4 and physical problems with which plaintiff presented, Dr. Schneider opined that it was  
5 very unlikely that plaintiff could sustain the typical demands of gainful employment (*see*  
6 Tr. 375). He opined that it was unlikely that plaintiff could tolerate the typical stresses,  
7 demands or expectations of competitive employment at that time (*see* Tr. 376). Dr.  
8 Schneider opined that there was a lack of evidence demonstrating ADHD, and that the  
9 “PTSD like symptoms are more of a concern than actual PTSD symptoms,” opining that  
10 “this does not fit the criteria for traumatic events” (*see id.*). Dr. Schneider indicated that  
11 he did not have “sufficient time to develop a clear chronology of the development of all  
12 these symptoms, many of which may be related to the head injury” (*see id.*). He also  
13 found that her social anxiety required further exploration and also probably was related to  
14 the head injury.  
15

16 The ALJ gave “little weight” to Dr. Schneider’s opinion (*see* Tr. 638). The ALJ  
17 reasoned as follows:

18 It is inconsistent with the objective testing (SIMS and MMPI – 2)  
19 showing that the claimant exaggerated her symptoms and was likely  
20 malingering as well as with evidence of inconsistent statements about the  
21 claimant’s abilities. It also does not square with recent evidence showing  
22 improved function with medication when taken as prescribed. It is also  
23 inconsistent with the claimant[’s] marginal work history even prior to  
24 her experiencing her head injury, as already explained.

(Tr. 638).

1 Based on the record as a whole, the Court concludes that the ALJ's findings are  
2 supported by substantial evidence in the record as a whole. First, as noted by the Court's  
3 description of the opinion of Dr. Schneider, he opined that plaintiff's symptomatology  
4 was related to her head injury, however, as noted by the ALJ, even in "the six years prior  
5 to [plaintiff's] accident, however, she earned only \$5931" (*see* Tr. 635). The ALJ also  
6 noted that plaintiff's total "lifetime earnings amount to \$21,451" (Tr. 634). The ALJ  
7 inferred from this evidence that "factors other than her alleged impairments affect her  
8 ability to maintain full-time employment," additionally noting that plaintiff's overuse of  
9 Valium, as reported to Dr. Biss, may have been "contributing to her lack of motivation to  
10 work" (*see* Tr. 635 (*citing* Tr. 328)).  
11

12 The ALJ may "draw inferences logically flowing from the evidence." *Sample v.*  
13 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1999) (*citing Beane v. Richardson*, 457 F.2d 758  
14 (9th Cir. 1972); *Wade v. Harris*, 509 F. Supp. 19, 20 (N.D. Cal. 1980)). However, an ALJ  
15 may not speculate. *See* SSR 86-8, 1986 SSR LEXIS 15 at \*22. The Court concludes that  
16 the ALJ's inference that plaintiff's work history suggests a lack of motivation to work, as  
17 does her overuse of her Valium prescription even though she indicated that it did not  
18 work, are "inferences logically flowing from the evidence." *See Sample, supra*, 694 F.2d  
19 at 642 (citations omitted). The Court also concludes that this finding, supported by  
20 substantial evidence in the record, provides a specific and legitimate reason for failing to  
21 credit fully the opinions of Dr. Schneider, who opined that plaintiff's symptomatology  
22 was related to her head injury, as opposed to her lack of motivation to work.  
23  
24

1 Similarly, as alluded to previously, Dr. Schneider appeared not to credit fully the  
2 MMPI-2 results which indicated that plaintiff was overreporting symptoms,  
3 exaggerating, and endorsing infrequent, unlikely and unrealistic psychiatric symptoms  
4 (*see* Tr. 375). Instead, Dr. Schneider appeared to opine that these results merely reflected  
5 further symptoms of plaintiff's head injury (*see id.*). The ALJ, however, unlike Dr.  
6 Schneider, also had evidence of plaintiff's results from the Structured Inventory of  
7 Malingered Symptomatology (SIMS), the results of which "far outweigh[ed] the  
8 conservative cutoff score" (*see* Tr. 330). As discussed in detail previously, this objective  
9 test used to detect malingering was evaluated thoroughly by Dr. Biss (*see id.*). Dr. Biss  
10 reviewed plaintiff's subscale scores, and found that they "revealed that her inflated SIMS  
11 Total Score was due to overreporting of unlikely symptoms for: (1) neurological  
12 impairment, (2) Affective Disorder, (3) Low IQ, and (4) Amnesia" (*see id.*). Therefore,  
13 Dr. Biss, in contrast to Dr. Schneider, opined that plaintiff "likely overreported her level  
14 of distress and level of cognitive impairment," and "strongly suspected" malingering (*see*  
15 Tr. 331).

17 The ALJ is responsible for resolving ambiguities and conflicts in the medical  
18 evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (*citing Andrews v.*  
19 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). In this matter, unlike Drs. Biss and  
20 Schneider, the ALJ had access to both plaintiff's SIMS test results as well as her MMPI-2  
21 test results. Both of these objective tests indicated that plaintiff was overreporting her  
22 symptoms and was exaggerating, endorsing infrequent, unlikely and unrealistic  
23 psychiatric symptoms (*see* Tr. 330, 375).  
24

1 For the stated reasons, the Court concludes that the ALJ's finding that the opinions  
2 of Dr. Schneider were "inconsistent with the objective testing (SIMS and MMPI-2)  
3 showing that the claimant exaggerated her symptoms and was likely malingering" is a  
4 finding based on substantial evidence in the record as a whole. The Court also concludes  
5 that this finding entails specific and legitimate rationale for failing to credit fully the  
6 opinion of Dr. Schneider.

7 The ALJ also found that Dr. Schneider's opinion was inconsistent with evidence  
8 of inconsistent statements about plaintiff's abilities. Despite plaintiff's report to Dr.  
9 Schneider that she attempted not be around more than one person and that she suffered  
10 from social anxiety (*see* Tr. 372), as noted by the ALJ, plaintiff reportedly maintained the  
11 ability to shop in stores 2 to 3 times a month and she reported that she attends social  
12 events (*see* Tr. 631 (*citing* Ex. 3E, 11F/5)). These findings are based on substantial  
13 evidence in the record (*see* Tr. 147, 328). For example, plaintiff reported to Dr. Biss that  
14 she consumed "alcohol infrequently at social events" (*see* Tr. 328).

16 Similarly, the ALJ found that Dr. Schneider's opinion was not consistent "with  
17 recent evidence showing improved function with medication when taken as prescribed"  
18 (*see* Tr. 638). This finding, too, is based on substantial evidence in the record as a whole,  
19 as will be discussed in further detail in the Court's discussion of the ALJ's rejection of  
20 the opinion of Dr. Kay Stradinger, Psy.D, *see infra*, section 1.C.

22 For the reasons stated herein and based on the record as a whole, the Court  
23 concludes that the ALJ provided specific and legitimate rationale for his failure to credit  
24 fully all the opinions from Dr. Schneider. *See Reddick v. Chater*, 157 F.3d 715, 725 (9th



1 Cir. 1998) (*citing Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)); *see also*  
2 *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (*citing Andrews v. Shalala*, 53 F.3d  
3 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).  
4

5 C. Dr. Kay L. Stradinger, Psy.D., examining doctor

6 Dr. Stradinger examined plaintiff in August 2013, approximately five months  
7 before the ALJ's written decision (*see* Tr. 821-32, 641). Dr. Stradinger noted plaintiff's  
8 report that she first had depressive symptoms when she was 16 (*see* Tr. 821). She also  
9 noted plaintiff's report that her depression was better managed "now because she was  
10 started on mood stabilizers six months ago and she thinks it helps her mood a little" (*see*  
11 *id.*). She also noted plaintiff's report that "her OCD is not so bad now" (*see* Tr. 822). Dr.  
12 Stradinger noted plaintiff's report that "she has social disorder" (*see id.*). Further  
13 indicating potential reliance on plaintiff's self-report, Dr. Stradinger also noted plaintiff's  
14 report that "memory loss is her 'biggest concern now'" (*see id.*).  
15

16 Dr. Stradinger noted plaintiff's report that plaintiff "does not work well with  
17 others" and that "she has issues with authority and always has" had such issues (*see* Tr.  
18 824). Dr. Stradinger noted plaintiff's opinion that "she believes she has no problems with  
19 abuse of or dependence on prescription medications," (*see id.*), in contrast to plaintiff's  
20 report to Dr. Biss that "she often over uses the medication," Valium (*see* Tr. 328), and to  
21 other reports of improper use of medications (*see, e.g.,* Tr. 508) and in contrast to Dr.  
22 Biss' opinion that plaintiff had a likelihood of "abuse [of] prescribed medications" (*see*  
23 Tr. 332).  
24

1 Dr. Stradinger performed a mental status examination (*see* Tr. 825-27). She noted  
2 that plaintiff “came in stating she had a migraine and that the lights in the waiting room  
3 and this room were terrible for her[, y]et when the examiner asked her if we could turn  
4 the overhead lights off, she said, ‘no, thank you,’ because it wouldn’t help” (*see* Tr. 825).  
5 Dr. Stradinger opined that plaintiff’s thought processes were goal directed, her voice was  
6 clear for understanding, and she spoke with an average rate, rhythm, volume, and of an  
7 above average amount (*see id.*).  
8

9 Regarding plaintiff’s memory performance, Dr. Stradinger indicated that plaintiff  
10 “could complete a five – digit span forward and a five – digit span backward on the first  
11 trials for low average and high average performances respectively” (*see* Tr. 826). Plaintiff  
12 was able to “complete a six – digit span forward on the second trial and a seven – digit  
13 span forward on the first trial,” although she was unable to complete a six – digit span  
14 backward on one trial (*see id.*). Regarding recent memory, plaintiff was able to repeat  
15 three out of three simple words on the first trial, and after about seven minutes, plaintiff  
16 successfully recalled two out of three words and with a clue could recall the third word,  
17 which Dr. Stradinger opined was a “slight impairment” (*see id.*). Regarding plaintiff’s  
18 memory for the past, plaintiff was able to report her birthday, phone number, and address  
19 without difficulty (*see id.*).  
20

21 Dr. Stradinger opined that plaintiff demonstrated below average fund of  
22 knowledge and information as she “could name the current US president and name two of  
23 the three previous to him, but not in the correct order, [and] could name 2/2 states  
24 bordering Washington” (*see id.*). Plaintiff refused to attempt serial sevens, however,

1 plaintiff “attempted serial 3s starting with 20 and correctly calculated backward to 11  
2 before she stopped, saying, ‘This irritates me because it should be so simple’” (*see id.*).  
3 Plaintiff was able to complete three simple arithmetic problems correctly (*see id.*).

4       Regarding her concentration, plaintiff demonstrated the ability to spell WORLD  
5 correctly both forward and backward (*see id.*). Regarding plaintiff’s abstract thinking, Dr.  
6 Stradinger indicated as follows:

7               [Plaintiff] said *No ifs, ands, or buts* means, “No, it’s not happening.”  
8               When presented with *The grass is always greener on the other side* she  
9               asked if you have to agree, then she said it meant, “They want something  
10              better than theirs.” She said *Rome wasn’t built in a day* means, “It takes  
11              time.”

(Tr. 826).

12       Regarding testing on similarities and differences, plaintiff “said a dog and lion are  
13 alike because they are animals and different because they are from the dog and cat  
14 family” (*see* Tr. 827). Dr. Stradinger opined that plaintiff’s judgment and insight were  
15 fair to adequate (*see id.*). She noted that if plaintiff “found a letter on the sidewalk she  
16 would put it in the mailbox [and] [if] she was in a movie theater and smoke broke out,  
17 suggesting fire, she would get out and pull the fire alarm” (*see id.*).

18       Dr. Stradinger diagnosed plaintiff with bipolar disorder not otherwise specified  
19 and indicated that this diagnosis was “per history” and also diagnosed PTSD, similarly  
20 indicating that this diagnosis was “per history” (*see id.*). Dr. Stradinger also diagnosed  
21 plaintiff with panic disorder with agoraphobia (*see id.*). She opined that plaintiff’s global  
22 assessment of functioning (GAF) was 51 (*see id.*).  
23  
24

1 With respect to her discussion and prognosis, Dr. Stradinger indicated that  
2 plaintiff had “good memory for having applied for SSI and immediately was asking how  
3 long this would be and remembering that she had to do a bunch of puzzles and things in  
4 the last evaluation she was required to go to” (*see id.*). Dr. Stradinger indicated that  
5 plaintiff “tended not to go into specific details regarding her past unless specifically  
6 asked, so given the limited time today the specific criteria for some of her many  
7 diagnoses could not be pinpointed such as PTSD, ADHD, and bipolar disorder” (*see id.*).  
8 Dr. Stradinger indicated that “it appears she has had treatment in the past according to the  
9 records and those providers have previously diagnosed her according to criteria over  
10 time” (*see id.*).  
11

12 Dr. Stradinger noted that plaintiff expressed little concern about OCD or ADHD  
13 or social phobia at her appointment and “stated that she was independent for all ADL’s  
14 yet also stated that she needs her child with her to drive or to grocery shop, indicating  
15 some inconsistency or ambivalence” (*see id.*). Dr. Stradinger indicated that although  
16 plaintiff stated that she mostly was concerned with memory loss, plaintiff “seemed to do  
17 quite well for memory in the exam today, however” (*see id.*).  
18

19 Regarding her functional assessment and medical source statement, Dr. Stradinger  
20 indicated that plaintiff was “capable of managing her funds, based on her cognitive level  
21 of function” (*see Tr. 828*). Dr. Stradinger opined that plaintiff had “marked impairment  
22 for accepting instructions from supervisors given her personality and perhaps related also  
23 to anxiety” (*see id.*). She also opined that plaintiff had “marked impairment in interacting  
24 with coworkers and the public given her problems with social skills and relationships”

1 (*see id.*). She opined that plaintiff had “moderate impairment for performing work  
2 activities on a consistent basis without special or additional instruction,” related to  
3 plaintiff’s problems with recall and problems with persistence, as well as potentially  
4 being related to anxiety (*see id.*). Dr. Stradinger opined that plaintiff had “marked  
5 persistence for maintaining regular attendance in the workplace and completing a normal  
6 workday/workweek without interruptions from her anxiety and depression” (*see id.*).  
7 Finally, she opined that plaintiff had “marked impairment for dealing with the usual  
8 stress encountered in the workplace,” related to problems with coping skills, which may  
9 be triggered by anxiety or depression (*see id.*).  
10

11 The ALJ included the following discussion in his written opinion:

12 Kay Stradinger, Psy.D., performed a consultative examination with the  
13 claimant in August 2013. She diagnosed the claimant with bipolar  
14 disorder, NOS, per history; posttraumatic stress disorder (PTSD), per  
15 history; panic disorder with Agoraphobia; cluster B traits and rule out  
16 diagnoses of attention deficit hyperactivity disorder (ADHD) and opioid  
17 dependence in a controlled setting (internal citation to Ex. 34F/7). She  
18 opined in one instance that the claimant is capable of managing her  
19 funds and in another that she is not. She opined further that the claimant  
20 is unimpaired for performing simple and repetitive tasks. The claimant  
21 has a marked impairment for accepting instructions from supervisors and  
22 for interacting with coworkers and the general public. The claimant has a  
23 moderate impairment for performing work activities on a consistent basis  
24 without special or additional instruction. The claimant also has a marked  
impairment in persistence for maintaining regular attendance in the  
workplace, for completing a normal workday and for dealing with the  
usual stress encountered in the workplace (internal citations to Ex.  
34F/7-8, Ex. 35F/1-3). Dr. Stradinger’s opinion is given little weight  
except for her assessment of the claimant’s ability to perform simple  
work, which is consistent with her performance on a mental status  
examination and squares with objective intelligence testing. Otherwise  
the opinion is inconsistent with that of Dr. Moore who reviewed the  
entire medical evidence record. Dr. Stradinger reviewed only the CBS  
crisis plan and notes from Peace Mental Health providers (internal

1 citation to Ex. 34F/1). Dr. Stradinger provided contradictory statements  
2 as to whether the claimant was capable of managing her own benefits. In  
3 addition, Dr. Stradinger's assessment does not square with Dr. Biss'  
4 findings of potential malingering and Valium abuse. Dr. Stradinger also  
5 does not account for evidence showing improvement with  
6 symptomatology with therapy and medication and evidence of  
7 medication non-compliance.

8 (Tr. 637).

9 Despite Dr. Stradinger's August 2013 opinion of plaintiff's multiple marked  
10 limitations, the ALJ discussed how plaintiff's symptoms actually improved over time  
11 when she was taking her medications as prescribed, which the ALJ also found that she  
12 did not always do. For example, the ALJ noted as follows:

13 The claimant's statements to Brent Francisco, an ARNP, or treating  
14 mental health provider, on February 2008, are seemingly incongruous  
15 with a person who alleges onset of depression during the previous  
16 month. She told Mr. Francisco that Cymbalta is helping, with no bad  
17 side effects. She reported decreased pain allowing her to go to the park  
18 more often with her children. She stated things were going well overall.  
19 Mr. Francisco observed she was well groomed and estimated her global  
20 assessment of functioning (GAF) score to be 55 (internal citation to Ex.  
21 20F/9-10). In mental status examinations in March 2012 and January  
22 2013, the claimant's mood, affect, judgment, insight, memory, attention,  
23 concentration and thought content were all within normal limits (internal  
24 citation to Ex. 45F/33, 41). In February 2013, the claimant reported she  
25 was 'doing okay' with her bipolar depression (internal citation to Ex.  
26 45F/27).

27 (Tr. 631 (footnote omitted)).

28 The ALJ's findings that plaintiff's mental health symptoms improved with  
29 medication and that she demonstrated test results within normal limits following mental  
30 status examinations are supported by substantial evidence in the record (*see id.*). On  
31 February 14, 2008, approximately one year before the relevant period of time for the

1 ALJ's decision (January 29, 2009), Mr. Brent Francisco, an ARNP, noted that plaintiff  
2 indicated that she was getting about six hours of sleep; that she had not noticed much  
3 difference in her depression, anxiety or pain management; and that she was not  
4 experiencing any bad side effects from her medications (*see* Tr. 395). On May 5, 2008, at  
5 her next appointment, according to the treatment record of Mr. Francisco, plaintiff "says  
6 Cymbalta is helping and [she] has a bit less pain, [and] is getting out to the park with the  
7 kids" (*see* Tr. 394). Plaintiff also reported that "overall things going okay" (*see id.*). This  
8 treatment record supports the ALJ's finding that plaintiff's mental health improved when  
9 she took her prescribed medication and that this improvement occurred even before the  
10 relevant period of time for the ALJ's written decision (*see id.*).  
11

12 Also as reported by Mr. Francisco, and as noted by the ALJ, plaintiff reported in  
13 February, 2009 "that her mood is better with the recent increase of Cymbalta [and  
14 plaintiff] [said] she feels happier and is having an easier time dealing with her kids" (*see*  
15 Tr. 490). Mr. Francisco opined that plaintiff was demonstrating a better range of affect  
16 than on her prior visit (*see id.*). Similarly, Mr. Francisco reported the subsequent month  
17 that plaintiff reported that "things are better" and that she had a bit more energy, and her  
18 sleep was okay (*see* Tr. 489). Mr. Francisco opined that plaintiff's mood was a bit better  
19 (*see id.*). On April 20, 2009, plaintiff indicated that "things are going good [and that the]  
20 only hangup is with her coverage for Cymbalta" (*see* Tr. 487). Plaintiff also indicated that  
21 her "anxiety is under good control, mood as improved and sleep is good" (*see id.*). As  
22 indicated by Mr. Francisco, plaintiff reported that "she has even noticed she is feeling  
23 better on rainy days" (*see id.*). On May 26, 2009, plaintiff similarly reported to Mr.  
24

1 Francisco that “everything is going fairly well” (*see* Tr. 485). Plaintiff indicated that her  
2 “meds are doing fine” (*see id.*). As noted by the ALJ, during plaintiff’s “course of  
3 treatment with Mr. Francisco in the first half of 2009, her estimated GAF score increased  
4 from 51 to 56” (*see* Tr. 632 (internal citation to 485, 487, 489–91)).

5 Similarly, in February, 2010, plaintiff indicated that her medications “have been  
6 working better” (*see* Tr. 553). At the same appointment, she indicated that medication  
7 and counseling both had helped her in the past (*see id.*). On August 2, 2010, plaintiff  
8 described “her recent moods as happy,” although the staff member noted that plaintiff did  
9 not appear happy (*see* Tr. 618). Less than a month later, on August 24, 2010, plaintiff  
10 “reported that she has been feeling really good lately due to her new [boyfriend]” and had  
11 gone camping over the previous weekend and reporting having a good time (*see* Tr. 616).  
12 On this occasion, the same staff member indicated that plaintiff “presented as happy,  
13 nicely groomed (makeup, jewelry), and was quite talkative” (*see id.*). The staff member  
14 indicated also that the tone of plaintiff’s voice was stronger than it had been before (*see*  
15 *id.*).  
16

17 Also as noted by the ALJ, in August, 2013, at plaintiff’s most recent consultative  
18 examination prior to the ALJ’s decision, plaintiff “state[d] her OCD is not so bad now,”  
19 and she noted her intensive outpatient weekly treatment (*see* Tr. 822). At the same  
20 appointment, plaintiff indicated that her depression was “better managed now because  
21 she was started on mood stabilizers six months ago” (*see* Tr. 821; *see also* Tr. 631).  
22 In February 2013, as noted by the ALJ, plaintiff reported that she was “doing okay” with  
23 her bipolar depression (*see* Tr. 962).  
24



1 For the reasons stated, the Court concludes that the ALJ's finding that such  
2 "evidence shows improvement in depressive symptoms with medication" is a finding  
3 based on substantial evidence in the record as a whole (*see* Tr. 633). The Court also  
4 concludes that the ALJ's finding of improvement of plaintiff's symptoms when she takes  
5 her prescribed medications supports the ALJ's failure to credit fully the opinion from Dr.  
6 Stradinger in August, 2013 regarding plaintiff's marked limitations from her mental  
7 health impairments. The ALJ's finding that "Dr. Stradinger also does not account for  
8 evidence showing improvement in symptomatology with therapy and medication and  
9 evidence of medication noncompliance" is a finding based on substantial evidence in the  
10 record as a whole. In addition, this is a specific and legitimate reason for failing to credit  
11 fully the opinions of Dr. Stradinger.  
12

13 The ALJ also found that the opinion of Dr. Stradinger was inconsistent with the  
14 opinion "of Dr. Moore who reviewed the entire medical evidence record," noting that  
15 "Dr. Stradinger reviewed only the CBS crisis plan and notes from Piece Mental Health  
16 providers" (*see* Tr. 637 (internal citation to Ex. 34F/1)). Plaintiff argues against this  
17 rationale, noting that Dr. Margaret Moore only opined that plaintiff's mental health  
18 impairments did not meet one of the listed impairments (*see* ECF No. 12, p. 18 (*citing* Tr.  
19 677-86)). However, as noted by defendant, "Dr. Stradinger's assessment of multiple  
20 marked limitations essentially was that plaintiff's impairments met or equaled a listing  
21 and [as such] was clearly inconsistent with Dr. Moore's assessment" (*see* ECF No. 16, p.  
22 11 (*citing* Tr. 828)). This finding by the ALJ also supports the ALJ's failure to credit  
23 fully the opinion of Dr. Stradinger.  
24

1 Finally, the ALJ noted an inconsistency within the opinion of Dr. Stradinger, as  
 2 well as noting that Dr. Stradinger's opinion did not appear to account for any potential  
 3 malingering, as found by Dr. Biss (*see* Tr. 637). These findings are supported by  
 4 substantial evidence in the record as a whole, and they provide some support for the  
 5 ALJ's failure to credit fully the opinion of Dr. Stradinger.

6 For the reasons stated and based on the record as a whole, the Court concludes that  
 7 the ALJ provided sufficient specific and legitimate rationale for failing to credit fully the  
 8 opinions of Dr. Stradinger. *See Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)  
 9 (*citing Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)); *see also Lester v.*  
 10 *Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (*citing Andrews v. Shalala*, 53 F.3d 1035,  
 11 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

13 D. Drs. Jerry Gardner, Ph.D. and Eugene Fierman, M.D., state agency, non-  
 14 examining medical consultants

15 Plaintiff complains that the ALJ failed to credit fully opinions from state agency,  
 16 non-examining medical consultants, Drs. Gardner and Fierman (*see* ECF No. 12, pp. 14-  
 17 16). In his written decision, the ALJ discusses the opinion of Dr. Gardner, whose opinion  
 18 was affirmed by Dr. Fierman (*see* Tr. 638).

19 The ALJ credited a portion of Dr. Gardner's opinion, but gave much of Dr.  
 20 Gardner's opinion "little weight" (*see* Tr. 638). The ALJ relied in part on his reasoning  
 21 that plaintiff "need not be limited to reading simple sentences as objective test scores  
 22 reveal a high school graduate level on reading fluency measures, a 9.1 grade level on the  
 23 letter – word identification subtests and reading comprehension at 11.3 grade level, and  
 24

1 [plaintiff] herself reported that she dropped out of high school because it was too easy”  
2 (*see id. (citing Exhibit 19F/3)*). This finding by the ALJ is supported by substantial  
3 evidence in the record, as Dr. Schneiders’ 2008 report indicates that plaintiff “left school  
4 during the 10th grade because she was bored” (*see Tr. 374*), his 2003 report indicates that  
5 she reported that in high school she “was bored because it was ‘too easy’” (*see Tr. 378*)  
6 and plaintiff reported to Dr. Biss in 2008 that “when she placed effort into her behaviors  
7 she was capable of receiving A’s” (*see Tr. 329*).

8  
9 The ALJ also specified that limitations with respect to “contact with coworkers are  
10 not warranted nor are additional limitations in the skill level of work as the record shows  
11 [plaintiff]’s subjective complaints of difficulties in social environments and difficulties  
12 with concentration, persistence or pace were found to be minimally credible based on  
13 SIMS and MMPI–2 testing” (*see Tr. 638*).

14 As discussed by the Court previously, *see supra*, section 1.A, Dr. Biss noted that  
15 plaintiff’s “Total Score for the SIMS was a 38, therefore far outweighing the conservative  
16 cutoff score of 16” to detect malingering (*see Tr. 330*). Dr. Biss noted that plaintiff “over  
17 reported symptoms in every category except psychosis” (*see id.*). Similarly, also as noted  
18 previously, the MMPI-2 conducted by Dr. Schneider also “indicates over-reporting of  
19 symptoms,” and as noted by Dr. Schneider, plaintiff “was endorsing infrequent, unlikely  
20 and unrealistic psychiatric symptoms” (*see Tr. 375*).

21  
22 The ALJ “may reject the opinion of a non-examining physician by reference to  
23 specific evidence in the medical record.” *Sousa v. Callahan*, 143 F.3d 1240, 1244 (9th  
24 Cir. 1998) (*citing Gomez v. Chater*, 74 F.3d 967, 972 (9th Cir. 1996)); *Andrews, supra*,

53 F.3d at 1041). Here, the ALJ specified multiple aspects of the record when failing to credit fully all of the opinion from state agency non-examining doctor, Dr. Gardner, whose opinion was affirmed by Dr. Fierman (*see* Tr. 638). Based on the record as a whole, the Court concludes the ALJ did not err when evaluating the medical evidence provided by Dr. Gardner, which was affirmed by Dr. Fierman. *See Sousa, supra*, 143 F.3d at 1244 (*citing Gomez v. Chater*, 74 F.3d at 972).

(2) **Did the ALJ provide clear and convincing reasons to discredit plaintiff's testimony?**

Plaintiff argues that the ALJ failed to provide clear and convincing rationale for his failure to credit fully plaintiff's allegations and testimony (*see* ECF No. 12, pp. 19-23). Plaintiff contends that the ALJ "did not give specificity to what testimony he found not credible and what evidence showed the testimony was not credible" (*see id.*, p. 20). Although plaintiff acknowledges that the ALJ relied in part on objective testing results and opinion evidence demonstrating plaintiff's exaggeration, plaintiff argues that "the record shows [plaintiff's] performance on testing was consistent with a head injury and her personality disorder" (*see id. (citing* Tr. 332, 275). Regardless of the cause of plaintiff's exaggerated testimony, the fact that plaintiff over-reported symptoms and provided exaggerated testimony is clear and convincing rationale for the failure to credit fully her allegations. Defendant additionally argues that even if the Court concludes that the ALJ committed legal error in the evaluation of plaintiff's credibility, "the Court should uphold the ALJ's credibility determination" (ECF No. 16, p. 13 (*citing Carmickle v. Comm'r. Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008))).

1 If the medical evidence in the record is not conclusive, sole responsibility for  
2 resolving conflicting testimony and questions of credibility lies with the ALJ. *Sample v.*  
3 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1999) (citing *Waters v. Gardner*, 452 F.2d 855,  
4 858 n.7 (9th Cir. 1971) (*Calhoun v. Bailar*, 626 F.2d 145, 150 (9th Cir. 1980)). An ALJ is  
5 not “required to believe every allegation of disabling pain” or other non-exertional  
6 impairment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (citing 42 U.S.C. §  
7 423(d)(5)(A) (other citations and footnote omitted)). The ALJ may “draw inferences  
8 logically flowing from the evidence.” *Sample, supra*, 694 F.2d at 642 (citing *Beane v.*  
9 *Richardson*, 457 F.2d 758 (9th Cir. 1972); *Wade v. Harris*, 509 F. Supp. 19, 20 (N.D.  
10 Cal. 1980)). However, an ALJ may not speculate. See SSR 86-8, 1986 SSR LEXIS 15 at  
11 \*22.  
12

13 Nevertheless, the ALJ’s credibility determinations “must be supported by specific,  
14 cogent reasons.” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citing *Bunnell v.*  
15 *Sullivan*, 947 F.2d 341, 343, 346-47 (9th Cir. 1991) (*en banc*)). The ALJ may consider  
16 “ordinary techniques of credibility evaluation,” including the claimant’s reputation for  
17 truthfulness and inconsistencies in testimony regarding symptoms, and may also consider  
18 a claimant’s daily activities, and “unexplained or inadequately explained failure to seek  
19 treatment or to follow a prescribed course of treatment.” *Smolen v. Chater*, 80 F.3d 1273,  
20 1284 (9th Cir. 1996) (citations omitted).  
21

22 If an ALJ rejects the testimony of a claimant once an underlying impairment has  
23 been established, the ALJ must support the rejection “by offering specific, clear and  
24 convincing reasons for doing so.” *Smolen, supra*, at 1284 (citing *Dodrill v. Shalala*, 12

1 F.3d 915, 918 (9th Cir.1993)); *see also Reddick, supra*, 157 F.3d at 722 (*citing Bunnell v.*  
2 *Sullivan, supra*, 947 F.2d at 343, 346-47).

3 Here, the ALJ offered multiple reasons for failing to credit fully plaintiff's  
4 allegations and testimony, such as her non-compliance with medical treatment and  
5 improvement in mental health symptoms when compliant with medication; lack of  
6 motivation to work; evidence of limited effort and exaggeration of symptoms; and  
7 inconsistent statements. The evidence of limited effort and exaggeration of symptoms,  
8 such as the SIMS report, the MMPI-2 test results, and the opinion by Dr. Biss that  
9 plaintiff was not putting forth full effort, was discussed previously in the context of the  
10 medical evidence, *see supra*, section 1 (*see also, e.g.,* Tr. 328, 330-31, 375). The Court  
11 also notes the opinion of Dr. Mary White, M. D. that plaintiff seemed "to make a poor  
12 effort during both the interview and the exam" (*see* Tr. 455-56). Likewise, regarding the  
13 ALJ's finding that plaintiff exhibited a lack of motivation to work even prior to her head  
14 injury, the Court already has discussed this finding and has found that it is based on  
15 substantial evidence in the record as a whole, *see supra*, section 1.B. The Court also  
16 concludes that plaintiff's lack of effort on testing and evidence of exaggeration, as well as  
17 her demonstrated lack of motivation to work both support the ALJ's failure to credit fully  
18 plaintiff's allegations and testimony.  
19

20 Similarly, some of the evidence regarding the ALJ's finding that plaintiff was not  
21 compliant with her prescribed treatment already has been discussed in the context of the  
22 medical evidence, *see supra*, section 1. The Court also discussed already in detail the  
23 ALJ's finding of plaintiff's improvement in symptomatology when compliant with her  
24

1 prescribed treatment, *see supra*, section 1.C. In addition, the Court also notes here that on  
2 April 22, 2008, plaintiff “reported that she has been advised to attend counseling, but has  
3 been noncompliant” (*see* Tr. 328). As noted, plaintiff reported that although her Valium  
4 prescription does not help, “she often over uses the medication” (*see id.*). Likewise,  
5 regarding plaintiff’s recommended physical therapy, the ALJ noted that in “September  
6 2012, the claimant initiated physical therapy but canceled the subsequent appointment  
7 and no – showed at her next appointment and was discharged from her physical therapy  
8 plan” (*see* Tr. 629 (*citing* Ex. 42F/1, 4) (also noting that plaintiff’s “doctors  
9 recommended continued exercise rather than restricted activity levels”)). Again, the  
10 Court concludes that the ALJ’s finding that plaintiff was non-compliant with prescribed  
11 treatment is a finding based on substantial evidence in the record as a whole. As already  
12 discussed, the Court also concludes that the ALJ’s finding that plaintiff’s symptoms  
13 improved when she was compliant with prescribed treatment is a finding based on  
14 substantial evidence in the record as a whole, *see supra*, section 1.C. These findings also  
15 support the ALJ’s failure to credit fully plaintiff’s allegations and testimony.  
16

17 Finally, the ALJ also noted a plethora of inconsistent statements by plaintiff. As  
18 noted previously, *see supra*, section 1.B, plaintiff reported not wanting to leave the house  
19 and reported avoiding being around more than one person, but also “reported consuming  
20 alcohol infrequently at social events” (*see* Tr. 328, 372). Although on March 28, 2009  
21 plaintiff reported that “she is unable to do almost anything; she lies around most of the  
22 time,” and at her first hearing on December 17, 2010, plaintiff testified that she does not  
23 do household chores because it hurts too much (*see* Tr. 658), in May, 2012, plaintiff  
24

1 reported being a caregiver for her mother because her mother had broken her leg (*see* Tr.  
2 902).

3 On December 17, 2010, plaintiff testified that she cannot use a cane or walker to  
4 get around because it hurts her wrists (*see* Tr. 656), and at her second administrative  
5 hearing on December 6, 2013, plaintiff testified that although her “wrists are still too  
6 weak to do most things,” (*see* Tr. 695), she testified that she now was using a cane and  
7 had been using the cane for “a few years at least” (*see* Tr. 692).

8 The ALJ noted that in the April 2008 evaluation by Dr. Biss, plaintiff reported  
9 discomfort when sitting and moving, however the doctor observed that plaintiff did not  
10 express discomfort or move excessively during the 90 minute interview (*see* Tr. 633  
11 (*citing* Tr. 327)). This finding by the ALJ is supported by substantial evidence in the  
12 record, as Dr. Biss’ report includes the following: “[Plaintiff] reported discomfort when  
13 sitting and moving. However, she did not express discomfort or move excessively when  
14 interviewed in the 1.5 hour time” (Tr. 327). Similarly, the ALJ noted that plaintiff  
15 testified at her first administrative hearing in December, 2010 that she could only sit for  
16 about “a half hour” (*see* Tr. 664), however in January, 2009, plaintiff reported to Mr.  
17 Francisco that she “has been doing nothing but sits” (*see* Tr. 391; *see also* Tr. 633).

18 The ALJ also noted that plaintiff reported to Dr. White in March, 2009 “that her  
19 11-year-old son does the cooking in the home because she cannot stand” (*see* Tr. 455),  
20 however plaintiff reported to Ms. Ellen Walker on April 19, 2010, that her son “refuses to  
21 do chores around the house” (*see* Tr. 518).  
22  
23  
24



1       The ALJ also discussed plaintiff's inconsistent statements regarding her drug and  
2 alcohol use (*see* Tr. 634). For example, as noted by the ALJ, plaintiff went to the  
3 emergency room on February 17, 2010 complaining of rectal pain and stated that she was  
4 "overusing her methocarbamol and other medications" and reported that she also was  
5 "drinking alcohol for her pain and state[d] that she drinks every single day" (*see* Tr. 508).  
6 The ER physician noted that plaintiff "was quite upset that I would not give her anything  
7 further for pain" (*see* Tr. 509). On February 23, 2010, plaintiff admitted using  
8 methamphetamine in the past at age 16 (*see* Tr. 544). The ALJ also noted that, in addition  
9 to the report to Dr. Biss that plaintiff overused her Valium (*see* Tr. 328), plaintiff  
10 admitted in June, 2011 "that she did have a problem with prescription narcotic abuse in  
11 the past, and was getting medications from family members in addition to doctors" (*see*  
12 Tr. 945). Similarly, on June 20, 2011 plaintiff "admitted to taking more pain meds than  
13 she needed to and this kept her in bed" (*see* Tr. 853).

15       In contrast to these admissions by plaintiff, as noted by the ALJ, in September  
16 2011, plaintiff "stated that she rarely drinks alcohol and denied any toxic habits" (*see* Tr.  
17 634 (*citing* Tr. 843)); and, in the following month, on October 19, 2011 plaintiff denied  
18 any "history of drinking or drug abuse" (*see* Tr. 848). Similarly, in May, 2012, plaintiff  
19 indicated that she drank "alcohol on occasion and denied any current or previous illicit []  
20 substance use or abuse including marijuana" (*see* Tr. 900). However, in August, 2013,  
21 plaintiff stated that she had used marijuana in the past (*see* Tr. 824).

23       For the stated reasons, the Court concludes that the ALJ's finding that plaintiff  
24 made inconsistent statements is a finding based on substantial evidence in the record as a

1 whole. The Court also concludes that this finding supports the ALJ's failure to credit  
2 fully plaintiff's allegations and testimony.

3       The Ninth Circuit has "recognized that harmless error principles apply in the  
4 Social Security Act context." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
5 (citing *Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th  
6 Cir. 2006) (collecting cases)). The court noted that "several of our cases have held that an  
7 ALJ's error was harmless where the ALJ provided one or more invalid reasons for  
8 disbelieving a claimant's testimony, but also provided valid reasons that were supported  
9 by the record." *Id.* (citations omitted). The Ninth Circuit noted that "in each case we look  
10 at the record as a whole to determine [if] the error alters the outcome of the case." *Id.* The  
11 court also noted that the Ninth Circuit has "adhered to the general principle that an ALJ's  
12 error is harmless where it is 'inconsequential to the ultimate nondisability  
13 determination.'" *Id.* (quoting *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155,  
14 1162 (9th Cir. 2008)) (other citations omitted). The court noted the necessity to follow  
15 the rule that courts must review cases "'without regard to errors' that do not affect the  
16 parties' 'substantial rights.'" *Id.* at 1118 (quoting *Shinsheki v. Sanders*, 556 U.S. 396, 407  
17 (2009) (quoting 28 U.S.C. § 2111) (codification of the harmless error rule)).  
18

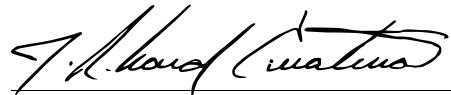
19       The Court concludes that even if the ALJ committed an error in the evaluation of  
20 plaintiff's credibility, any such error is harmless error. The ALJ included multiple  
21 findings based on substantial evidence in the record that support his failure to credit fully  
22 plaintiff's allegations and testimony. The Court concludes that the ALJ provided clear  
23 and convincing reasons for his failure to credit fully plaintiff's credibility.  
24

CONCLUSION

Based on the stated reasons and the relevant record, the Court **ORDERS** that this matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

**JUDGMENT** should be for defendant and the case should be closed.

Dated this 6th day of November, 2014.

A handwritten signature in black ink, appearing to read "J. Richard Creatura", written over a horizontal line.

J. Richard Creatura  
United States Magistrate Judge